* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: April 20,2007.
Date of decision : May 1st, 2007

\+ CRL.REVISION PETITION NO.58/2007

DHARAMPAL YADAV ..... Petitioner
Through Mr. G.P. Thareja, Mr. R.S. Mahla, Advocates.

versus

THE STATE ..... Respondent
Through Mr. R.M. Tiwari, Advocate.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat

1. This present Criminal revision petition is directed against the order on charge under Section 304/330/201/193/34 IPC passed by the Additional Sessions Judge ("the trial court") on 09.11.2006.

2. The brief facts necessary to decide this petition are that on 09.12.1997 FIR No.360/1997 was registered at Hauz qazi police station relating to a stabbing incident that took place the previous day. The present petitioner (SHO Dharampal) and an Assistant Sub Inspector (ASI) had picked up Harishankar (herein after referred to as "the deceased") and others when they could not find

any clues of the assailant, allegedly the son of the deceased. These relatives of the accused were taken to the Police Station.

3. The deceased and the others were allegedly made to stand in rain, in the cold night of December and forced to beat each other with Chappals, in the Police Station. Thereafter, they were locked up in the "Shankarman Kaksh". They were not provided with food, water, clothes and blankets. The deceased and the other relatives of the accused were not witnesses in the stabbing case, but they were illegally detained by the Petitioner and the other ASI.

4. The Petitioner was approached by a Municipal Councilor for release of the deceased. He stated that the deceased would be released only when his accused son surrendered. The deceased and others were allegedly detained till the next day. They were allegedly tortured to extract information about the accused and on 10.12.97 the Petitioner allegedly beat up the deceased and made him 'MURGA', (i.e. holding one's ears, even while bending and continuing in that position, causing acute pain and distress) . The deceased was in this position for half an hour, when he was also kicked and beaten up. The deceased was brought back to the room by a constable at 3 pm. He was not in a position to stand, and fell down on the other detainees Gurdayal Singh and Hiralal. The deceased was later on taken to LNJP hospital in an auto-rickshaw at 4.30 pm where he was declared as "brought dead".

5. In the inquest proceedings conducted on the death, a medical board of 3 doctors opined that the death was caused due to heart attack and there were no external injuries on the body. There was another expert opinion of experts of AIIMS who felt that after death, a person's body sphincter looses grip and the person may pass urine, and stool; and that cold, hunger and mental trauma during unlawful custody could have triggered a heart attack.

6. The charge sheet stated that the deceased was made "MURGA". He was kicked and beaten up by the Petitioner. Thereafter he was brought back to 'sankarman Kaksh' by the constable and left in the room. The deceased then fell down on the detainees; he was unconscious and had no control over his bowels, he passed stool and urine. On seeing the deceased in that condition, the detainees knocked at the door to get some help, but there was none to help them. After a couple of minutes, the ASI saw the deceased and asked the detainees to take him to LNJP hospital. The deceased was declared brought dead by the hospital authorities.

7. On the information given by the other detainees the doctor had mentioned in the hospital medico legal injury register and in the OPD card it was alleged that the deceased was brutally beaten up in the police custody, when the other detainees complained about the deceased's illness still the police did not give proper care and attention.

8. It is alleged in the investigation report that the petitioner and the ASI manipulated the entries in the daily diary of the police station to cover up the wrongful confinement of the deceased. The ASI also prepared false Section 160 Cr.P.C. notices in the name of the deceased and also other detainees; they forged signatures on them so as destroy evidence.

9. The trial court charged the petitioner of having committed offences punishable under Section 304/342/330/365/201 IPC. The extracts of the Ld. ASJ's order dated 9.11.2006 are as follows.

> *"On a prima facie consideration of the overall evidence coming on record coupled with the SDM report and medical opinion there appears to be sufficient material on record to presume the commission of the offence under Section 304/330 and 201/34 IPC. At the same time the report of the SDM has indicated the 2 accused of fabricating false evidence by making false DD entry and false notice under Section 160*

Cr.P.C. on which signatures of the receipients were found to be forged. In view of the same it would also make out a prima facie case for the charge under Section 193 IPC and 471 IPC against the 2 accused.

However, they are discharged for the offence under Section 365 IPC as no where it is the case that Harishankar was secretly confined to any place of which others were having no knowledge. There is no need to frame a separate charge for the offence Under Sections 323 and 342 as Sec. 330 IPC is sufficient to cover up the offence under these provisions. Order on charge is made accordingly."

10. Mr. G.P. Thareja, learned counsel contended that the entire allegations in the FIR, the charge sheet and the expert medical evidence do not amount to sufficient evidence which can lead to a charge under Section 304 IPC. Counsel contended that at best the allegations against the petitioner were that he illegally detained the deceased, and made him murga for some time; this did not imply a mental frame showing knowledge that death of the deceased would take place.

11. Learned counsel relied on the judgments reported as *Dnyaneshwar Dagdoba Hivrekar Vs. The State of Maharashtra 1982 Crl. L.J. 1870; Annadurai Vs. State 1989 (2) Crimes 315; Bhagat Ram Vs. State of H.P. 1989 Crl. L.J. 2520; Thomas Vs. State of Kerala 1992 Crl. L.J. 581* for the submission that the acts complained of, in support of a valid charge for commission of offence punishable under Section 304, should be clear enough to show knowledge that death would occur. It was also argued that the evidence does not lead to grave suspicion about commission of the offence.

12. Mr. Tiwari learned counsel for the CBI, which was entrusted with the investigation and had filed a charge sheet in the case, contended that this Court had occasion to examine the facts in a previous proceeding being Crl.R.P. No.522/200, reported as

CBI Vs. Dharam Pal Singh & Anr. 123(2005) DLT 592. It was contended that the Court had in that case considered the relevant materials and allowed the CBI's revision. Under these circumstances the petitioner could not seek relief from this Court.

13. It was next contended that the circumstances of the case did point to more than a serious suspicion about the petitioner's knowledge that his acts would in the natural course of events lead to the death of the deceased. Counsel highlighted the material circumstances for that purpose such as the unlawful detention for about 40 hours during the coldest part of winter when the temperatures were at the most about, 10 degree C; absence of any warm or adequate blanket/clothing to protect the deceased from the cold climate; absence of any food provided by the police during the custody and repeated torture and mental agony including asking the deceased to be "murga". It was submitted considering the deceased's age, there was every likelihood of his death. The deceased as a result of treatment (which included acts and omissions, intentionally caused by the petitioner) died while in custody. The Court, it was submitted cannot examine the adequacy of the testimonies as long as reasonable material pointing to a grave suspicion exists, the Court should frame the charge.

14. The factual narrative is not seriously disputed. The only question is whether the acts of omission and commisson, seen in totality point to a frame of mind disclosing intention to cause injury or harm that would have, in the normal course of events resulted in death of the deceased. Here though the petitioner asserts that mere unlawful detention and asking a person to remain "murga" - in the absence of any external injuries, would not normally result in the death of a person, a cumulative effect rather than isolated events would have to be seen. The prolonged and unlawful detention of the deceased, the cold winter climate (allegedly at that time there were rains) – no provision for warm blankets; no provision for food, agony and harassment to the deceased and asking him to be "murga" for half an hour – he was 55 years old – cumulatively in my opinion point to intention to cause such injury or harm as would in all likelihood have resulted in death. The judgment cited by the counsel no doubt

shows that the Courts would have to examine the evidence and one or the other isolated incident, which in the subjective facts of the case lead to death, may be insufficient to convict the accused, yet they are not authorities that charges on the basis of a cumulative reading cannot be framed. In fact all the cases cited were on the basis of evidence led, and judgments delivered by the Court on merits. None of the authorities deal with the consideration of evidence and discharge of the accused.

15. After considering the materials on record including the charge sheet I am of the opinion that charges framed in the impugned order do not require any interference. The revision petition is accordingly dismissed without any order as to costs.

May 1st, 2007
mlb

(S. RAVINDRA BHAT)
JUDGE